

SB658 Pattern and Practice.pdf

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POSITION ON PROPOSED LEGISLATION

BILL: Senate Bill 658 – Patterns and Practices of Civil Rights Violations

FROM: Deborah Levi with the Maryland Office of the Public Defender

POSITION: Favorable

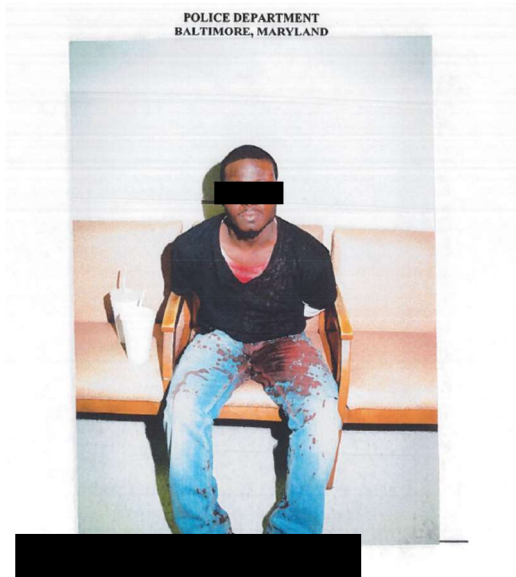
DATE: 02/24/2023

The Maryland Office of the Public Defender (OPD) urges a favorable report on Senate Bill 658, to authorize the Maryland Attorney General to investigate and initiate a civil action to remedy unlawful patterns or practices committed by law enforcement. OPD is the largest law firm in the State of Maryland. We represent the most amount of people who interact with law enforcement through the criminal justice system. It is our contention, and that of others,¹ that deeply entrenched patterns and practices exist within some of our State's law enforcement agencies that result in countless unnecessary and preventable civil rights violations. The federal government is unable to respond promptly enough, and there is no other entity in our State government, but for the Attorney General, who is appropriate to or capable of undertaking a pattern and practice investigation and addressing the harms meted out across the State in the form of civil rights violations.

While some testimony in front of this Honorable legislative body may speak on overarching policies, I can speak about the people I have represented who have been the victims of a multitude of civil rights violations. This type of harm, which hurts individuals, families, and

¹ See, Michael Bromwich, et. al., *Anatomy of the Gun Trace Task Force Scandal: Its Origins, Causes, and Consequences*, available at <https://www.stepto.com/a/web/219380/3ZF1Gi/gttf-report.pdf>.

communities, is not something that we have time to wait for to fix. While the City of Baltimore waited for the Department of Justice to make them a priority, law enforcement officers reigned terror on our citizens in the form of, among other things, illegal beatings, looting, strip searches and kidnapping. These abuses of power are entirely preventable, and our State has an obligation to pay attention to these harms and exhaust all efforts to prevent and repair them.



This is a photograph of an individual who was unjustly beaten by a law enforcement officer. According to internal affairs files related to the incident, the officer illegally entered the man's apartment while executing a search and seizure warrant in a totally unrelated residence. The officer then removed his department issued walkie talkie and assaulted this man, for absolutely no reason. The officer then called the crime lab to take pictures of the abuse. This fact laid secret in the officer's internal affairs files, along with multiple other accounts of individuals who claimed to be beaten by the officer with his department issued walkie talkie. And yet, for over a decade, all of these harms were kept in secret and covered up. This, and multiple other accounts of abuse occurred years before the Department of Justice uncovered a pattern and practice of unconstitutional policing in Baltimore.

This example of police brutality is just one of so many that occur in Baltimore and other jurisdictions across the State, but it happened years before the DOJ uncovered a practice of unconstitutional policing in the Baltimore Police Department. And sadly, the DOJ's involvement only came after the tragic death of Freddie Gray and riots in the streets of

Baltimore. We simply have no time for another senseless and preventable death to catch the attention of the Department of Justice, and make our state a priority amongst all the other states clamoring for help. We need the attention of our local government to respond to the needs of the people who suffer from repeated abuse by law enforcement. And put simply, there is no other agency equipped, authorized, or able to do this other than the Maryland Attorney General.

As legislators, you may be asking if we are in need of pattern and practice legislation since we passed Anton's Law, and the answer to that question is yes. Yes, we need this. Unfortunately, of the 130 law enforcement agencies in the State of Maryland to whom we have submitted PIA requests seeking misconduct records, zero have fully complied with our requests for transparency. The need police reform has not vanished with the passage of Anton's Law, and our clients and the people we serve need, and have needed, independent oversight to rid our state of the abuses of power that have tormented so many. We therefore urge a favorable report of SB 658

SB658_MCCR_Hughes_FAV.pdf

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Position: FAV



State of Maryland Commission on Civil Rights

Respect...Integrity...Effective Communication

February 28, 2023

Senate Bill 658 – Human Relations – Patterns and Practices of Civil Rights Violations – Remedies

POSITION: Support

Dear Chairperson Smith, Vice Chairperson Waldstreicher, and Members of the Senate Judicial Proceedings Committee:

The Maryland Commission on Civil Rights (“MCCR”; “The Commission”) is the State agency responsible for the enforcement of laws prohibiting discrimination in employment, housing, public accommodations, health services, and state contracts based on race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, gender identity, genetic information, physical and mental disability, and source of income.

Senate Bill 658 would amend the State Government Article, Title 20 to give the Attorney General the power to investigate and pursue civil remedies for cases involving a pattern or practice of civil rights violations in corrections, parole/probation, immigration detention, law enforcement, juvenile services, and state behavioral health facilities. The bill would give the Attorney General the authority to subpoena individuals and records, administer oaths, and examine witnesses.

This bill would mirror the mandate of 34 U.S.C. § 12601, which gives the United States Department of Justice (“DOJ”; “The Department”) the power to conduct pattern or practice investigations of systemic misconduct in state agencies, negotiate agreements, and seek judicial remedies. But instead of having to rely on the federal government for those investigations, when necessary, the Maryland Office of the Attorney General would be authorized to step in, if reasonable cause of a pattern or practice of misconduct arose. For example, the DOJ investigation into the Baltimore Police Department after Freddie Gray’s death in 2015 ultimately led to the consent decree between Baltimore City and the Department. However, SB 658 would allow the Attorney General to conduct similar investigations in their own community to address any misconduct by government agencies, such as local police departments.

Currently, the Attorney General is able to investigate cases where a person dies in police custody, but the decision to bring charges is made by local prosecutors. Instead of leaving this choice to the State’s Attorneys, who may be less objective than the autonomous AG’s Office, this bill would authorize the Attorney General to

“Our vision is to have a State that is free from any trace of unlawful discrimination.”

Governor
Wes Moore

Lt. Governor
Aruna Miller

Commission Chair
Stephanie Suerth, MPA,
CCEP

Commission Vice Chair
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Magdalena S. Navarro,
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Cleveland L. Horton II

Assistant Director
Martine Chery

General Counsel
Glendora C. Hughes

**Director of Education
& Outreach**
Kara N. Hunt, Ph.D.

have jurisdiction over the entire life of a case, from investigations to litigation, making the process more streamlined.

Furthermore, the federal government has been responsible for conducting these investigations since 1994, and it carries a large burden as the primary institution of enforcement. Over the past two decades, several states have passed legislation enabling their attorneys general to handle pattern or practice cases, including California, Colorado, Virginia, and Nevada. Since the DOJ is able to undertake only a portion of the total number of cases due to limited resources, these state laws ease the federal burden to conduct these investigations across the country. SB 658 would allow state resources to be put toward addressing systemic problems in Maryland by our state's lawyers.

Lastly, MCCR is responsible for enforcing state non-discrimination laws and pursuing remedies for individuals who have suffered discrimination in employment, housing, and public accommodations. Section 20-1036 allows the Commission to bring a civil action against those engaged in a pattern or practice of discrimination if the suit is in the public interest. However, this provision is limited to housing discrimination, leaving a wide gap in enforcement. Senate Bill 658 would serve to fill that need, giving the Attorney General broad and independent authority to investigate and litigate pattern and practice cases against the named government departments in a multitude of situations.

For these reasons, the Maryland Commission on Civil Rights urges a favorable vote on SB 658. Thank you for your time and consideration of the information contained in this letter. MCCR looks forward to the continued opportunity to work with you to improve and promote civil rights in Maryland.

In Support SB 658 CCJR.pdf

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Position: FAV



TESTIMONY IN SUPPORT OF SB 658 / HB 771

Human Relations – Patterns and Practices of Civil Rights Violations – Remedies

TO: Members of the Senate Judicial Proceedings and House Judiciary Committees

FROM: **Heather Warnken, Center for Criminal Justice Reform, Univ of Baltimore School of Law**

DATE: February 27, 2023

My name is Heather Warnken and I am the Executive Director of the University of Baltimore School of Law’s Center for Criminal Justice Reform, testifying in support of SB 658 / HB 771.

Our center works to improve public safety and address the harm and inequity caused by the criminal legal system. It is undeniable that we have a long way to go in this country and indeed this state in addressing both of these goals. By authorizing the state Attorney General to investigate and initiate actions to remedy unlawful patterns and practices of rights violations against our residents, this bill represents a meaningful and much needed additional tool for change.

The similar power bestowed in the U.S. Department of Justice since 1994, authorizing the Civil Rights Division to conduct pattern or practice investigations and compel corrective action, has in many places been impactful in holding police departments and other government entities accountable. This power has undeniably mitigated substantial harm.¹ However, the reach and results have often been slow and far from perfect, as demonstrated by the current implementation process surrounding the Baltimore Police Department consent decree. Three of the main reasons for USDOJ’s limitations are:

- 1) lack of sufficient resources to reach all of the jurisdictions where such investigations are needed (currently the DOJ Civil Rights Division has the ability to investigate less than .02% of the country’s approximately 18,000 state and local law enforcement agencies each year)²;
- 2) lack of stability in this work as a priority (discussed further below); and
- 3) lack of proximity and sufficient ongoing connection to the *community* as a necessary partner in diagnosing systemic deficiencies and identifying the actions needed to overcome them.

Residents bearing the brunt of widespread rights violations are the most important voices in this process. They must continue to have a meaningful seat at the table in designing legally enforceable remedies, and in the relentless follow-through necessary to implement, measure and sustain real change.

¹ https://socialchangenyu.com/wp-content/uploads/2019/12/Brianna_Hathaway_RLSC_44.1.pdf;
<https://www.americanprogress.org/wp-content/uploads/2021/07/PatternPractice-factsheet1.pdf>.

² https://socialchangenyu.com/wp-content/uploads/2019/12/Brianna_Hathaway_RLSC_44.1.pdf.

Culture eats policy for breakfast. As documented extensively in the literature and lived experiences of disproportionately Black and brown Marylanders for decades, changing the culture within policing and corrections that allows patterns and practices of civil rights violations to persist is complex, often uphill work. Even the most thorough consent decrees are only as good as their implementation, and the staying power of any progress achieved.

Our center firmly believes that placing this authority in the hands of the state Attorney General, elected by and for the residents of Maryland, is not only needed, but will enhance the potential effectiveness of such authority as a tool for change. This change must be measured not in numeric counts of updated policies and procedures intended to correct systemic problems, but in the lives of the residents able to say whether they actually did.

As stated by author Brianna Hathaway in an instructive law review article analyzing pattern or practice authority at the state and federal level, state-led pattern or practice investigations:

“could shrink [the democratic deficit which occurs when unelected federal officials lead this work,] and allow for more bottom-up reform and accountability. State investigations could be a model of “democratic experimentalism,” which seeks to improve governmental effectiveness by encouraging the participation of and information-sharing with local stakeholders.”³

Furthermore, “[s]tate power could restore the political legitimacy of a reform process that is often mistrusted by both law enforcement and the public.”⁴ This is definitely needed in Maryland, as evidenced by frustration by some constituents with the consent decree process in Baltimore.⁵

Another advantage the state Attorney General will have in utilizing the tools created by SB 658 is greater stability. In addition to lack of sufficient resources, USDOJ’s exercise of this authority in meeting the vast need for this work across the country has been hampered by shifts in departmental priorities that occur with changes in political leadership. During my own time at the Department of Justice (where I spent five and half years spanning three presidential administrations), I experienced firsthand the fluctuation and turbulence surrounding agency-wide efforts on these issues. Unlike USDOJ’s leadership, who report to the Chief Executive, the Maryland Attorney General is elected by the people and sworn to protect the rights of all Marylanders, thereby more insulated, relatively speaking, from shifting priorities that occur at the state and federal level.

Attorneys General in other states have already been able to step into the gap on multiple occasions, including in Illinois when a DOJ consent decree addressing an investigation of the Chicago Police

³ https://socialchangenyu.com/wp-content/uploads/2019/12/Brianna_Hathaway_RLSC_44.1.pdf.

⁴ Id.

⁵ See for example, Warnken et al, *Victim Services Capacity Assessment Report*, USDOJ National Public Safety Partnership, pg 12.

https://www.baltimorepolice.org/sites/default/files/2022-08/PSP%20Victim%20Services%20Assessment%20FINAL_B.pdf.

Department was derailed by the results of a national election.⁶ California is another example, where the first such state law authorizing this power in the Attorney General’s office was enacted in 2000, creating opportunities to address unmet needs in diverse jurisdictions that likely would not have been pursued otherwise by USDOJ.⁷

Furthermore, “this system not only allows states to learn from the federal government’s past pattern-or-practice cases, but it also promotes interstate collaboration to create institutional change. [S]tate attorneys general have used their powers before to work with each other to drive national reform. Structurally, the NAAG often facilitates multistate investigations and litigation to promote policy reform. The ability of state attorneys general to pool resources and information could be leveraged to investigate police misconduct and attain national police reform.”⁸

Creating this authority in the state Attorney General is also critical to promote public safety. Despite the pushback from some that such investigations can “tie the hands of officers,” hampering enforcement activities needed to address violent crime, the research is clear that this is not the case, and in fact, the opposite is often true. Unconstitutional policing and correctional practices which degrade and violate the rights of our fellow citizens demand our attention because they are untenable and unlawful, full stop. However, these practices also demand our attention because they undermine public safety, through erosion and severance of public trust in our institutions.

The legitimacy of the criminal legal system in the eyes of many Marylanders, especially Black, brown and low income residents living in highly policed and over incarcerated communities, is already in crisis. Trust and collaboration between community members and police and prosecutors who investigate and try cases is frayed, as demonstrated in part by abysmally low clearance rates in Baltimore and other jurisdictions throughout the state.⁹ Identifying and rooting out patterns and practices of rights violations is a significant part of the work of improving the community relationships needed to solve crime.

This tool has also been demonstrated as effective for improving policing in other ways which contribute to public safety; for example, ushering in the resources and technical support needed to modernize and humanize the process of a department’s data collection. Policing and corrections data are notoriously lacking in quality and transparency in too many jurisdictions throughout Maryland. Better, more accurate data not only leads to improved accountability in how residents are treated, but provides vital information for understanding public safety challenges, and developing solutions more calibrated to existing violence and community needs.

⁶ https://socialchangenyu.com/wp-content/uploads/2019/12/Brianna_Hathaway_RLSC_44.1.pdf.

⁷ Id.

⁸ Id.

⁹ BPD homicide clearance rates dropped again in 2022, down to 36%, from 42% the previous year, and is even lower for nonfatal shootings. This includes cases where any arrest was made or the case was “cleared by other means” like the suspect is subsequently murdered.

Rooting out systemic rights violations also saves vital government resources desperately needed for more effective public safety efforts. Payouts to victims of grievous rights violations have reached astounding totals, including for example, \$16 million and counting paid just to the limited known victims of the Gun Trace Task Force in Baltimore, or the recently announced \$7 million settlement pending for the brutal beating experienced by a single victim in Baltimore’s jail in 2014 (an institution struggling to address its documented widespread rights violations and deficiencies).¹⁰

These totals do not take into account the significant resources wasted on prosecutions dropped and cases overturned in the aftermath of widespread misconduct, such as the 800 convictions subsequently reversed after a review of existing cases involving members of the disgraced Gun Trace Task Force.¹¹

Numerous protections uniquely available to officers, such as wide legal latitude to employ force and qualified immunity, have created a public perception - and often reality - that police and corrections officials are untouchable, even for the most egregious harm, and even when that harm is widespread.¹² Especially given the relative rarity of consequences for misconduct by police and correctional officers (even via internal departmental discipline),¹³ the need for a heightened role for the state Attorney General in identifying and remedying patterns or practices of harm is clear.

According to scholar Joanna Schwartz, “to successfully facilitate reform, it is necessary to have (1) leverage to enable the reformer to place pressure on law enforcement agencies to change their behavior; (2) motivation to ensure that the reformer stays committed to her goals; and (3) resources, such as time, money and personnel, to implement institutionalized reform. These factors come into play on all levels of government. Combined, they influence the ability to effectively police the police.”¹⁴

The state Attorney General is already well positioned on (2) and (3), and SB 658 empowers this office with (1), the leverage needed to effectuate real change. For these reasons, we urge a favorable report.

¹⁰ In August 2022, the ACLU National Prison Project published a letter following a visit to the Baltimore Central Booking and Intake Center, stating, “people in [Baltimore Central Booking and Intake Center] IMHU are held in the harshest and most deprived conditions we have ever encountered in any prison or jail in the United States, including in death row and ‘supermax’ units.

www.aclu.org/cases/duvall-v-hogan?document=duvall-v-hogan-report-plaintiffs-counsel-august-2-3-2022-jail-visit;
<https://www.baltimoresun.com/news/crime/bs-md-cr-million-dollar-settlement-recommended-for-closed-baltimore-jail-lawsuit-20230222-y5w2v3jo5ncjiboyooisv4dsq-story.html>.

¹¹

<https://www.baltimoresun.com/news/crime/bs-md-ci-cr-memphis-baltimore-flex-units-20230204-klstyuvgd5atxoyrqcprljc5ia-story.html>.

¹² <https://harvardlawreview.org/2017/06/why-do-courts-defer-to-cops/>;
<https://www.nytimes.com/2017/05/31/us/police-shootings-trial-jury.html>;

<https://columbialawreview.org/content/police-suspects/>.

¹³ <https://www.chicagotribune.com/news/ct-chicago-police-misconduct-settlements-met-20160129-story.html>;
<https://www.audacy.com/wcbs880/articles/nypd-paid-nearly-69-million-in-settlements-in-2019>.

¹⁴ https://socialchangenyu.com/wp-content/uploads/2019/12/Brianna_Hathaway_RLSC_44.1.pdf.

SB658_Downs_co-chair_FAV.pdf

Uploaded by: Jason Downs

Position: FAV

Testimony of Jason Downs on Senate Bill 0658

Good afternoon, Chair Smith and members of the Senate Judicial Proceedings Committee. My name is Jason Downs. I serve as a co-chair of the State Attorney Practice Group at a national law firm. I previously served as the chief deputy attorney general for the District of Columbia, where I managed the day-to-day operations of the office, which included civil rights enforcement and defending matters brought against government officials. Previously, I served as a partner at two different Maryland-based law firms, where I managed affirmative civil rights litigation in federal and state courts. In other words, I have been responsible for defending and initiating lawsuits against government officials.

It is an honor to testify in support of Senate Bill 0658. I will use my time to ask you to consider two points. First, implementing SB0658 is fiscally responsible. Second, implementing this bill is socially responsible.

Let's start with the business case: pattern and practice investigations reduce the litigation costs that accompany serious government misconduct. Take PERF for example. PERF is the Police Executive Research Forum, which is a national membership organization of police executives primarily from the largest city, county and state law enforcement agencies in the United States. PERF gives several examples¹ of police chiefs around the United States confirming that the results of pattern and practice investigations reduced litigation against the department. I'll highlight one of those examples today: a Retired Cincinnati Police Chief said, "[p]rior to the consent decree in Cincinnati, we paid out \$10 to \$11 million to settle a number of lawsuits. But since the consent decree, the ACLU has not sued the Police Department. That is a tremendous savings."² Giving our Office of Attorney General the authority to initiate pattern and practice investigations is the financially responsible decision to protect Maryland's fisc.

Second, SB0658 is socially responsible. Maryland should not rely on the federal government to conduct pattern and practice investigations of Maryland government officials. We should police ourselves. The federal government's willingness to review pattern and practice investigations changes depending on which administration is in power. Marylanders should not be forced to rely exclusively on an increasingly polarized federal government. When properly implemented, the result of a pattern and practice investigation improves public safety and community relations. In fact, a former Philadelphia Police Commissioner stated "[t]he end result was very positive. Shootings dropped by 80 percent and have remained low. And it gave us credibility with the public."³

In short, my experience defending and prosecuting pattern and practice investigations coupled with research on this topic leads me to conclude that SB0658 is a financially and socially responsible mechanism to protect Marylanders. Thank you for considering my testimony.

¹ Police Executive Research Forum, *Civil Rights Investigations of Local Police: Lessons Learned*, pp. 34-35.

² *Id.* at 35.

³ *Id.* At 34.

pattern and practice testimony Maryland Senate Jon

Uploaded by: Jonathan Smith

Position: FAV

Testimony of Jonathan M. Smith

**Before the Maryland State Senate Committee on Judicial Proceedings
In Support of Senate Bill 0658 – Pattern and Practice Authority for Civil Rights
Violations**

February 28, 2023

Law enforcement agencies and correctional institutions play a critical role in the creation of public safety. Officials in these institutions are given extraordinary powers that are unique in our Constitutional form of government – the power to use force, to detain individuals and to deprive them of their liberty. These powers are not unlimited and must be exercised within the boundaries of Maryland laws and the State and federal Constitutions. When our criminal justice agencies operate outside of the law – when there are patterns and practices of conduct that do not comply with the Constitution – public safety and the legitimacy of these institutions are undermined.

Pattern and practice cases pursued by the State Attorney General are one effective tool to ensure that the policies, training, supervision, and accountability systems of police and correctional agencies are designed to ensure that misconduct is avoided, and when it occurs, that it is identified and addressed. I strongly support Senate Bill 0658 to give the Maryland Attorney General pattern and practice authority.

I am Jonathan M. Smith. I am the Executive Director of the Washington Lawyers Committee for Civil Rights and Urban Affairs. From 2010 through 2015, I served as the Chief of the Special Litigation Section of the Civil Rights Division of the United States Department of Justice. The Section is responsible for the enforcement of, among other laws, the law enforcement provisions of the Omnibus Violent Crime Control and Law Enforcement Act, 42 U.S.C. 14141 (recodified 34 U.S.C. 12601) and the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. 1997, et. Seq. Thus, the Special Litigation Section has the authority to address patterns and practices of the violation of the Constitution and federal laws with regard to a broad range of criminal justice institutions – police, prisons, jails, and juvenile justice systems.

Since leaving the Department of Justice, I have worked as a consultant to the Illinois Attorney General regarding the State's negotiation of its consent decree with the City of Chicago and on the investigation of the Joliet, Illinois Police Department. I am a subject matter expert to the Minnesota Department of Human Rights in its consent decree negotiations with Minneapolis. I was recently made a member of the Baltimore Police Department monitoring team.

The State Attorney General, as the highest law enforcement official in the State, is ideally positioned to ensure that criminal justice officials operate within the bounds of

their authority. The ability of the State Attorney General to bring cases is an essential, powerful, but reasonably limited and measured tool.

Pattern and practice authority is designed to:

Address wide spread problems that have significant community impact. Pattern and practice authority is effective and appropriate where there is a deep seated and long-standing problem in a police department or correctional institution that cannot be addressed by local leadership alone. The authority is not used for a single incident or event, but instead problems that go to core operational deficiencies that lead to routine or regular violations of residents' rights.

Result in improved policy, training, and internal accountability. I have been involved in the investigation of patterns and practices in more than 30 police departments around the nation. In every case in which we have found a pattern or practice, at core was a failed system of internal accountability. Accountability starts with clear policy guidance, adequate training, and strong supervision, but also requires data collection and internal structures of review and corrective action.

A pattern and practice case is a uniquely effective mechanism to address systemic issues. Any remedy is based on a thorough investigation. The process provides transparency to the jurisdiction and its residents, and can create durable remedies. When it works best, the process creates a collaboration between the agency, the community, and the Attorney General.

Increase trust and legitimacy. For law enforcement to play its role in the creation of public safety, it must have the trust of the community. Pattern and practice cases play an important role in rebuilding trust that is broken by repeated incidents of misconduct. Trust is built over time through engagement, transparency, accountability, and measurable outcomes. The independence of the Attorney General, and where necessary the court and a monitor, provide assurance to communities that change is meaningful and long lasting. We have seen in cities as diverse as Los Angeles, Seattle, New Orleans, and East Haven, Connecticut that community confidence in law enforcement rises through the consent decree process.

Protect the public fisc through the reduction in litigation. A single damages case for police misconduct or arising out of prison conditions can result in millions of dollars paid out of a local government's budget.¹ Proactive measures through a pattern and

¹ Alexander, Rich & Thacker, The hidden billion dollar cost of repeated police misconduct, Washington Post (March 9, 2022) [Repeated police misconduct cost taxpayers \\$1.5 billion in settlements - Washington Post](#); Thomson-Devaux & Bronner, Police Misconduct Costs Cities Millions Every Year. But that is

practice case reduce litigation by imposing measures that will decrease the likelihood that officers will engage in conduct that deprive residents of their rights.

Importantly, they uphold the community's values that the law applies equally to everyone regardless of position. In the protests that followed the murder of George Floyd, one of the constant themes was that communities experienced two standards of accountability – a harsh and unforgiving system that is applied to residents of color and persons who are low-income and second system that protects law enforcement and correctional officials from and consequences regardless of their actions. In every pattern and practice case that I have worked on, amongst the most critical outcomes was the strengthening of internal affairs and civilian oversight. These measures give communities a greater sense of fairness and that the rules apply equally to all.

While the effect of these cases is great, it is important to underscore the very limited nature of this remedy. The powers that will be given to the Attorney General will be to seek compliance with the laws and Constitution of the State – nothing more. For a remedy to be imposed it must be necessary to correct a systemic problem that leads to repeated violations of residents' rights. In many cases this might require a detailed consent decree or settlement agreement, but that is because it is essential to be effective that the remedy be implemented in a staged fashion, that the concerns be addressed throughout the institutions systems, and that the remedy be in place long enough to change the culture of the agency. Policy deficiencies must be addressed before training can be conducted; training completed before officers can be held to the policy standards; and accountability systems fixed before they can function fairly and effectively. Data must be collected and analyzed to ensure that change is effective.

More than ten state attorneys general currently have pattern and practice authority and that number is likely to grow after this legislative session. I am most familiar with the work in Illinois, Minnesota, and Colorado. In each of those states, the attorney general has conducted investigations and has negotiated or is in the process of negotiating a consent decree. These cases have addressed critical systemic deficiencies including patterns of serious, and some cases lethal, excessive force and racial and gender bias in enforcement practices. The work of these attorneys general go to the very core of law enforcement functions and effectiveness.

I have seen these cases work effectively at the federal and the state level. Important change can be achieved through this process. I urge your support for this legislation.

Where Accountability Ends., Marshall Project (February 22, 2021). [Police Misconduct Costs Cities Millions Every Year. But That's Where The Accountability Ends. | The Marshall Project.](#)

Senate Testimony SB-658 2-28-2023.pdf

Uploaded by: Karl Bickel

Position: FAV

Patterns or Practices of Civil Rights Violations Testimony

Attorney General Brown used his January 8 inaugural address to ask for the authority to conduct pattern-or-practice investigations as part of his police reform strategy. What is a pattern-or-practice investigation and how will it benefit Marylanders?

In the wake of the Rodney King beating by Los Angeles police officers in 1991, and the resulting Christopher Commission Report, the 1994 crime bill passed by Congress authorized the United States Attorney General to investigate law enforcement agencies for “a pattern-or-practice of conduct...that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.”

These investigations do not focus on specific incidents of misconduct but patterns-or-practices that suggest routine uses of excessive force, bias-based policing, or arrests that are unreasonable, and any discrimination based on race, ethnicity, national origin, religion, disability, or sex. In his speech, Attorney General Brown made clear that the “...goal of these investigations is to support law enforcement agencies, and, to foster community confidence by promoting best policing practices.”

Since 1994, the U.S. Justice Department has conducted pattern-or-practice investigations in communities across the nation. They have been used to address problems in departments ranging in size from six officers to seventeen thousand officers.

The investigation may focus on traffic or investigative stops, searches, or arrest practices and procedures, use of excessive force, bias-based policing, or violations of constitutional rights. Investigations may be prompted by a persistent series of complaints regarding police practices or a single incident that captures the attention of the public.

While each pattern-or-practice investigation is different, most involve reviewing written policies and systems for accountability, a review of training, observing officer activities, and analyzing relevant data surrounding incidents that show an unacceptable pattern-or-practice.

A pattern-or-practice investigation assesses whether any systemic deficiencies contribute to officer misconduct or enable it to persist. Hearing directly from community members and police officers through forums and interviews is a central part of the investigation and is critical to understanding the issues particular to the community under examination. The community as well as rank and file officers must be heard in order to instill confidence in the thoroughness and integrity of the investigation.

When there are findings of patterns-or-practices that are in conflict with law or the Constitution, the report will clearly delineate what those patterns-or-practices are and will identify any systemic deficiencies and possible remedies.

When patterns-or-practices of unlawful policing are found, the investigating authority will work with the department and community stakeholders to remedy any unlawful practices.

A broad range of measures that are often a product of these investigations and agreements include policies to prevent bias-based policing, stricter use of force guidelines, improvements in training and

data collection, fairer hiring and promotion processes, greater accountability, and increased community input regarding police department policy.

A pattern-or-practice investigation can help a police department remedy persistent problems, increase trust between the community and the police, and bring about improved policing practices that are lawful, effective and better meet a community's needs. It can also ensure police officers have the policies, supervision and training needed to police in a manner that provides a greater measure of safety for the community as well as the individual officers.

With around 18,000 state and local law enforcement agencies nationwide, Attorney General Brown has recognized that the U.S. Department of Justice cannot adequately address the needs of every community.

Providing Attorney General Brown the authority to conduct pattern-or-practice investigations will permit Maryland to join the Department of Justice and several other states in pursuit of improved police services through greater accountability. I am respectfully ask that you provide our new attorney general the tools to do the job if we are serious about police reforms.

Karl Bickel, a retired U.S. Department of Justice Senior Policy Analyst was previously second in command of a full service Sheriff's Office, formerly with a major city police department and former assistant professor of criminal justice. He can be reached at KarlBickel@comcast.net.

SB 658_mgoldstein_fav 2023.pdf

Uploaded by: Mathew Goldstein

Position: FAV



Secular Maryland

secularmaryland@tutanota.com

February 28, 2023

SB 658 - SUPPORT

Human Relations - Patterns and Practices of Civil Rights Violations - Remedies

Dear Chair Smith, Vice-Chair Waldstreicher, and Members of the Judicial Proceedings Committee,

Civil rights violations by state agencies can be a serious problem that our laws should guard against. The Delaware Attorney General has authority to enforce laws designed to ensure citizen trust in government, including election laws, laws governing the use of public funds, and laws governing the conduct of public employees and officials. This bill is narrower, it authorizes the Attorney General to investigate and initiate civil action against only some state agencies. Secular Maryland favors strengthening state level civil rights protections and supports this bill. We would support giving the Attorney General even more comprehensive jurisdiction to investigate and prosecute unlawful government conduct than this bill proposes.

Mathew Goldstein
3838 Early Glow Ln
Bowie, MD

JPR Gov. Moore Pattern & Practice - Favorable.docx

Uploaded by: Myles Hicks

Position: FAV

**STATE OF MARYLAND
OFFICE OF THE GOVERNOR**



The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee
Miller Senate Office Building, 2 East Wing
11 Bladen Street
Annapolis, Maryland 21401

WES MOORE.
GOVERNOR

STATE HOUSE
100 STATE CIRCLE
ANNAPOLIS, MARYLAND 21401-1925
(410) 974-3901
(TOLL FREE) 1-800-811-8336

TTY USERS CALL VIA MD RELAY

Mr. Chairman Smith, Members of the Judicial Proceedings Committee,

I urge a favorable report on SB658, Human Relations – Patterns and Practices of Civil Rights Violations – Remedies. This legislation gives the Office of the Attorney General authority to investigate and remedy patterns or practices of misconduct by law enforcement and others responsible for the custody or supervision of civilians.

The first piece of patterns and practices legislation was passed by Congress in 1994 following the beating of Rodney King. California was the first state to obtain pattern and practice authority, which has now also been adopted by nine other states' attorneys generals: Colorado, Illinois, Massachusetts, Nevada, New York, Oregon, Rhode Island, Virginia, and Washington. SB658 is also consistent with the federal George Floyd Justice in Policing Act of 2021 which would have provided states nationwide with authority to conduct pattern or practice investigations.

We have seen numerous cases of misconduct from Rodney King to Tyre Nichols. It is imperative that our state works to address systemic misconduct by law enforcement and others in the criminal justice system to keep people who live and visit our state safe. Patterns and practice investigations will increase public confidence and trust in the police, provide our state government the continued benefit of lower litigation cost, lower rates of violent crime, and improve agency operations. Riverside Police Department in California is one example of reform agreements resulting in stronger communities, crime reduction, and improved trust in law enforcement. After California entered a consent decree to reform the Riverside Police Department (RPD), complaints against RPD officers plummeted by almost 80 percent.¹ Data from the DOJ also shows that violent crime rates declined in all 10 of the analyzed jurisdictions, following the national trend.²

¹ Connor Maxwell and Danyelle Solomon, Expanding the Authority of State Attorneys General to Combat Police Misconduct, CENTER FOR AMERICAN PROGRESS (Dec. 12, 2018), <https://www.americanprogress.org/article/expanding-authority-state-attorneys-general-combat-police-misconduct/>.

² Kenny Lo and Sarah Figgatt, Violent Crime Rates Declined in 10 Jurisdictions Following Comprehensive Police Reform, CENTER FOR AMERICAN PROGRESS (Nov. 16, 2020), <https://www.americanprogress.org/article/violent-crime-rates-declined-10-jurisdictions-following-comprehensive-police-reform/>.

During my State of the State address, I mentioned the need to change the trajectory of our state for generations to come. We must take this step to eliminate the pattern or practice of misconduct in Maryland to keep our communities safe and improve the operation of state agencies.

Again, I urge a favorable report on SB658, Human Relations – Patterns and Practices of Civil Rights Violations – Remedies.

Best Regards,

Governor Wes Moore

SB 658 Human Relations—Patterns and Practices of C

Uploaded by: Nancy Soreng

Position: FAV



TESTIMONY TO THE SENATE JUDICIAL PROCEEDINGS COMMITTEE

SB 658 Human Relations—Patterns and Practices of Civil Rights Violations—Remedies

Position: Favorable

By: Nancy Soreng, President

Date: February 28, 2023

The League of Women Voters is a nonpartisan organization that believes the civil rights of all people must be protected. The League of Women Voters also supports measures to ensure transparency and accountability in government.

In the last few years, we have repeatedly seen flagrant misconduct by law enforcement personnel that deprives people in custody of their civil rights. In addition to police custody, Maryland has custody of and houses people in Correctional Facilities (which are overseen by the Division of Correction), Immigration Detention Centers and State Behavioral Health Facilities. Likewise, the Division of Parole and Probation has jurisdiction over and supervises offenders who are on parole or probation. Unfortunately, these entities can engage in egregious behavior, including entrenched systemic practices, that abridge the rights of those in custody or under supervision.

SB 658 empowers the Office of the Attorney General to investigate these entities if it has probable cause to believe that the facility, its employees, agents, or those acting on behalf of the facility are engaging in a "pattern or practice" that "deprives an individual of rights, privileges, or immunities secured or protected by the U.S. Constitution, the Maryland Constitution or state or federal law." If the Office of the Attorney General finds such a pattern or practice, then it can commence a civil action to "eliminate the pattern or practice of conduct."

The Office of the Attorney General is uniquely qualified to carry out SB 658. Its staff and attorneys have experience conducting extensive and complex investigations into systemic wrongdoing and have handled complex cases to stop pervasive misconduct. Additionally, the Office of the Attorney General is an independent entity. As a result, it could conduct impartial investigations and strengthen the public's perception about government.

The League urges a favorable report for SB 658.

SB658_CenterForAmericanProgress_Ndumele_SVP.pdf

Uploaded by: Nicole Ndumele

Position: FAV

Center for American Progress

Maryland General Assembly Senate Judicial Proceedings Committee

Testimony in support of Patterns and Practices of Civil Rights Violations- Remedies, SB658

Authorizing the Attorney General to investigate and initiate a civil action to remedy unlawful patterns or practices committed by certain government officials; providing that the Attorney General shall have subpoena power to support certain investigations; and providing that the Attorney General may obtain equitable and declaratory relief to eliminate the pattern or practice of certain conduct.

February 28, 2023

Hello, my name is Nicole Lee Ndumele and I am the Senior Vice President of Rights and Justice at the Center for American Progress. It is my pleasure to testify today in support of Senate Bill 685, granting the Attorney General authority to investigate and initiate civil action to remedy unlawful patterns or practices by certain government officials. If enacted, this bill will provide an important tool for the State of Maryland to hold its police departments accountable for systemic patterns of misconduct, including racially biased policing ingrained in certain institutional policies and practices that cannot be remedied adequately without comprehensive solutions.

The Center for American Progress is an independent, nonpartisan policy institute dedicated to improving the lives of all Americans through bold, progressive ideas, as well as strong leadership and concerted action. I lead the Center for American Progress' cross-cutting work to advance bold, large-scale policy solutions that meet the long-standing challenge of racial and criminal injustice and seize the current opportunity to build a better America where all people have an equal opportunity to thrive. I am also a former federal civil rights prosecutor, having worked in the Civil Rights Division in the Department of Justice to prosecute law enforcement misconduct.

The Civil Rights Division has the authority to prosecute constitutional violations by individual law enforcement officers and to bring civil actions to remedy patterns or practices of law enforcement misconduct.

The recent killing of Tyre Nichols at the hands of police has [renewed the national call](#) for police accountability that ensures both that the individual officers involved are brought to justice and that systemic reforms are put into place to stem the much too rampant violence, misconduct, and racially biased policing of Black people in this country. The Center for American Progress has long recognized that real public safety requires public trust and meaningful accountability between the police and the communities they serve. Accountability measures like pattern-or-practice investigations provide critical opportunities to investigate and root out the misconduct, racial bias, and excessive uses of force that strip Black Americans of the safety and security they deserve.

While the Attorney General has had pattern-or-practice authority since 1994 and launched [over 70](#) investigations during that time, the U.S. Department of Justice simply does not have the capacity to initiate investigations into every department for which they might be warranted. There are approximately 18,000 local, state and federal police departments, and increasing demands for pattern-or-practice investigations. As such, a growing number of states have statutorily empowered their state attorneys general to conduct their own pattern-or-practice investigations, as Maryland is seeking to do. In 2000, [California](#) became the first. In the wake of national protests against police violence in 2020, [Colorado](#), [Virginia](#), and [Nevada](#) passed similar legislation.

Research suggests that police reform agreements that result from a pattern or practice investigation improve public safety and advance much needed systemic reform. For example, a study from the Harvard Kennedy School [found](#) that Los Angeles experienced lower crime rates and a higher quality of enforcement activity after its police department implemented a consent decree. Additionally, a [2020 analysis](#) by the Center for American Progress [found](#) that violent crime rates declined in all 10 analyzed jurisdictions following fulfillment of a reform agreement. Research from the University of Pennsylvania also [found](#) that the use of consent decrees—when accompanied by court-appointed monitoring—was linked to a 29 percent reduction in officer-related fatalities.

Expanding the opportunity for state attorneys general to conduct pattern or practice investigations is particularly important because it can lead to the adoption of long-lasting, and sometimes even statewide, reforms that combat systemic issues which might not have been realized without the use of an investigation process. For instance, in [Colorado](#) an investigation of the Aurora police department was conducted, which found a “pattern and practice” of racially disproportionate enforcement conduct in use of force practices. Because of the investigation, new policing measures were implemented and the department has now made a commitment to improve their use of force policies. Under this proposed measure, Maryland stands to gain significant insight into the reforms that are needed to ensure true and equitable justice throughout their enforcement agencies.

Furthermore, SB658 is a significant continuation of the recent successful efforts that were made by Maryland's lawmakers to pass several crucial policing reform measures, aimed at increasing much needed transparency and accountability within the state's policing practices. These measures were not only a legislative response to the murder of George Floyd, but an answer to the [strong support](#) Maryland's constituents showed for true accountability standards in law enforcement. Passage of this vital legislation would continue this General Assembly's commitment to the implementation of accountability standards that will ultimately improve trust between communities and law enforcement and enhance public safety.

On behalf of the Center for American Progress, I urge the Maryland Senate and General Assembly to swiftly pass and sign SB658 into law. With this measure, Maryland can foster greater trust and accountability between their police and their communities that will have beneficial results for generations to come.

Thank you for the opportunity to submit this testimony for the record.

Anne Arundel County_FAV_SB 658.pdf

Uploaded by: Peter Baron

Position: FAV

February 28, 2023

Senate Bill 658

**Human Relations - Patterns and Practices of Civil Rights Violations -
Remedies**

Judicial Proceedings Committee

Position: FAVORABLE

Anne Arundel County **SUPPORTS** Senate Bill 658 – Human Relations - Patterns and Practices of Civil Rights Violations - Remedies. This Bill would authorize the Attorney General to investigate and initiate civil actions to remedy unlawful patterns or practices committed by government officials, grant the Attorney General subpoena power to support investigations, and empower the Attorney General to obtain equitable and declaratory relief to eliminate the pattern or practice of certain conduct.

Pattern and practice investigations, focused on widespread or systemic misconduct that deprive people of their rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, are an important component in instituting systemic change in law enforcement. Studies have shown that pattern and practice investigations and resulting recommendations or consent decrees have been effective in reducing violent crime,¹ serious use-of-force incidents,² and police officer fatalities.³ Several states have statutorily empowered their attorneys general to conduct their own pattern and practice investigations, including California in 2000 and more recently Colorado, Virginia, and Nevada. By focusing not on individuals but rather institutions, including management, supervision, and training, pattern and practice investigations facilitate the development of sound policies and procedures to ensure accountability and transparency while keeping our residents and police officers safe.

For all of these reasons, Anne Arundel County respectfully requests a **FAVORABLE** report on Senate Bill 658.

¹ Center for American Progress, *Violent Crime Rates Declined in 10 Jurisdictions Following Comprehensive Police Reform*, (Feb. 27, 2023).

<https://www.americanprogress.org/article/violent-crime-rates-declined-10-jurisdictions-following-comprehensive-police-reform/>

² Office of the Mayor of Seattle, *City of Seattle Releases New Reports Showing That Seattle Police Department Sustained A Dramatic Reduction in Serious Use of Force and Continues Significant Reforms Under Federal Consent Decree*, (Feb. 27, 2023).

<https://durkan.seattle.gov/2019/11/city-of-seattle-releases-new-reports-showing-that-seattle-police-department-sustained-a-dramatic-reduction-in-serious-use-of-force-and-continues-significant-reforms-under-federal-consent-decree/>

³ Li Sian Goh, PhD, *Going Local: Do Consent Decrees and Other Forms of Federal Intervention in Municipal Police Departments Reduce Police Killings?* Justice Quarterly. Volume 37, 2020 - Issue 5 (2020).

MLA Written Testimony - Senate Bill 658 - FAV.pdf

Uploaded by: Somil Trivedi

Position: FAV



**MARYLAND
LEGAL AID**

Advancing
**Human Rights and
Justice for All**

**Senate Bill 658
Human Relations – Patterns and Practices of Civil Rights Violations – Remedies
In the Senate Judicial Proceedings Committee
Hearing on February 28, 2023
Position: FAVORABLE**

Maryland Legal Aid (MLA) submits its written and oral testimony on SB 658 in response to a request from Chair Will Smith.

MLA appreciates the opportunity to testify in support of this vital legislation. We are the state's largest nonprofit law firm, representing thousands of low-income Marylanders every year in matters from housing to family law to unemployment. While we do not represent criminal defendants, our civil clients come from the most [underinvested communities](#) in the state—the same ones hit hardest by unconstitutional policing, mass incarceration, and systemic discrimination. We need a partner inside government with the tools to undo these harms, hold bad actors accountable, and clear the way for our clients to thrive. This bill provides some of those tools.

MLA's expungement work brings us in close contact with Maryland's criminal justice system. Over the last five years, we have represented over 11,000 people in civil proceedings to clear past criminal convictions that stand in the way of job opportunities, public benefits, and family unity. Over 55% of our expungement clients have been Black, and this is sadly unsurprising. As of 2020, [70% of Maryland's prison population was Black](#), compared to 30% in the population as a whole. This was the largest disparity in the nation at the time. We do not know what portion of those convictions were wrongful or coerced or the result of illegal practices. We do not know what portion could have been avoided if our prison system were not so [criminogenic](#). However, given the level of scandal in Maryland's [police](#) and [prison](#) systems over the years, plus the all-too-common practice of [charging the victims](#) of brutality to deflect blame, we need an agency with the resources to find out.

Of course, being saddled with criminal records is not the only civil harm of illegal law enforcement practices. Unconstitutional, often racially discriminatory arrests—even if they do not lead to convictions—can prevent someone from getting a job interview or receiving unemployment while they search. Arrests frequently impact custody and child welfare hearings. They can prevent people from getting housing or get a renter evicted, disrupting entire families living in subsidized housing even when only one member is charged. In addition, [repeated payouts](#) for police misconduct without corresponding injunctive relief saps funds that could be used on schools, roads, and hospitals. These cascading economic impacts of our current criminal justice system further tear apart communities already reeling from that system. Yes, our communities demand and deserve safety. However, they deserve justice and prosperity as well, and the three are not mutually exclusive.

To be sure, the Attorney General’s enforcement of civil rights violations, standing alone, will not lift our communities out of oppression. We imagine the Attorney General would agree. To achieve that goal, the state must chart a new vision for justice that stops trying to jail our way out of every problem and instead invests in communities to prevent harm in the first place. This means access for every Marylander to shelter, food, family, and healthcare—all things that MLA attorneys secure for their clients each and every day.

That said, accountability matters. Because SB 658 will help the Attorney General achieve accountability for civil rights violations across our justice system, including on behalf of so many of our clients, MLA enthusiastically supports the bill. If the Committee would like additional information, please contact Somil Trivedi, MLA’s Chief Legal & Advocacy Director, at strivedi@mdlabor.org or (410) 951-7679.

2023-02-28 SB 658 AG Testimony - Pattern or Practi

Uploaded by: Anthony Brown

Position: FWA

ANTHONY G. BROWN
Attorney General



CANDACE McLAREN LANHAM
Chief of Staff

CAROLYN A. QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.
443-681-1060

WRITER'S DIRECT DIAL NO.
410-576-7070

February 28, 2023

The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee
Miller Senate Office Building, 2 East Wing
11 Bladen Street
Annapolis, Maryland 21401

*Re: SB 658 – Human Relations – Patterns and Practices of Civil Rights
Violations – Remedies*

Dear Chair Smith:

I urge the Judicial Proceedings Committee to adopt sponsor amendments and then favorably report Senate Bill 658.

Senate Bill 658 would give the Office of the Attorney General, or, in the case of state entities, the State Agency Accountability Counsel, authority to investigate and remedy patterns or practices of misconduct by law enforcement and others responsible for the custody or supervision of civilians. This latter category includes correctional facilities, behavioral health facilities, immigration detention facilities, juvenile facilities, and parole and probation services.

Pattern or practice investigations target systemic misconduct by law enforcement and others in the criminal justice system. They uncover widespread abuses within an agency—such as discrimination or the consistent use of excessive force—and create change by requiring reforms to agency policies, processes, and culture. The implementation of these reforms is then monitored to ensure agencies actually follow through on their commitments. Pattern or practice investigations are an important complement to existing law enforcement accountability tools. Most of the current tools in Maryland address past individual instances of misconduct. Pattern or practice investigations, on the other hand, look for widespread trends and put in place reforms to reduce and eliminate misconduct going forward. The bill does not authorize private enforcement or create a private cause of action for a private remedy.

Senate Bill 658 would add Maryland to the growing number of states that use pattern or practice investigations as a key part of their police reform efforts. The United States Department of Justice first obtained pattern or practice authority in 1994, following the brutal beating of

This bill letter is a statement of the Office of Attorney General's policy position on the referenced pending legislation. For a legal or constitutional analysis of the bill, Members of the House and Senate should consult with the Counsel to the General Assembly, Sandy Brantley. She can be reached at 410-946-5600 or sbrantley@oag.state.md.us.

Rodney King. In 2000, California became the first state to obtain pattern or practice authority. Since 2020, in the wake of the killings of George Floyd, Breonna Taylor, and far too many others, at least nine more states' attorneys general have obtained authority to conduct pattern or practice investigations: Colorado, Illinois, Massachusetts, Nevada, New York, Oregon, Rhode Island, Virginia, and Washington.

Senate Bill 658 is also consistent with the federal George Floyd Justice in Policing Act of 2021, which I twice helped pass in the U.S. House of Representatives. The bill would have, among other things, provided states grant funding to conduct pattern or practice investigations. The Act recognized that state pattern or practice authority, in addition to federal authority, is essential to meaningfully and proactively addressing police misconduct. The United States Department of Justice ("DOJ") lacks the resources to address misconduct at each of the thousands of law enforcement agencies nationwide. And DOJ's exercise of its authority ebbs and flows with administrations. While the Obama and Biden administrations have used their authority proactively, the Trump administration initiated just one pattern or practice investigation of a police department in four years. Granting the Office of the Attorney General pattern or practice authority will ensure that such investigations are always available as a tool to protect Marylanders, and that these investigations are led by officials who understand the needs of and are accountable to the people of this State.

Notably, state-level pattern or practice investigations are often more targeted and of shorter duration than those at the federal level. State investigations often target specific units or policies within an agency, not the agency as a whole. This allows for investigations that are more limited in scope and time, and which therefore deliver practical benefits to communities more efficiently.

Finally, and perhaps most importantly, pattern or practice investigations work. They have a demonstrated track record of increasing public safety, decreasing violent crime, and leading to higher job satisfaction among officers. A Harvard study found that after the Los Angeles Police Department entered a consent decree, there was a positive effect on both the quantity and quality of police activity.¹ The LAPD used force less often, crime declined, relations between the community and police improved, and there was less attrition among officers.² Likewise, a Center for American Progress analysis found that violent crime decreased in all ten jurisdictions studied that had entered reform agreements following pattern or practice investigations.³ These reductions in violent crime were particularly consistent as time went on and reforms were more fully implemented.⁴ And a University of Pennsylvania study found a 29% decrease in officer-involved fatalities when pattern or practice investigations led to well-monitored consent decrees.⁵

¹ Christopher Stone, Todd Foglesong, & Christine M. Cole, *Policing Los Angeles Under a Consent Decree: The Dynamics of Change at the LAPD*, HARV. KENNEDY SCH. i, 22, 31–32 (May 2009) (available at <https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2021/12/Harvard-LAPD-Study.pdf>).

² *Id.* at i–ii, 6–8, 15, 32–38, 44–53.

³ Kenny Lo and Sarah Figgatt, *Violent Crime Rates Declined in 10 Jurisdictions Following Comprehensive Police Reform*, CTR. FOR AM. PROGRESS (Nov. 16, 2020), <https://www.americanprogress.org/article/violent-crime-rates-declined-10-jurisdictions-following-comprehensive-police-reform/>.

⁴ *See id.*

⁵ *Consent Decrees Can Reduce the Number of Police-Related Killings, But Only When Used Alongside Court-Appointed Monitoring*, THE LONDON SCH. OF ECON. AND POL. SCI. (Mar. 18, 2020),

The empirical evidence consistently shows that pattern or practice investigations improve the safety of the communities in which they occur.

For the foregoing reasons, I urge the adoption of sponsor amendments and a favorable report of SB 658. Thank you.

Sincerely,

Anthony G. Brown

cc: Committee Members

<https://blogs.lse.ac.uk/usappblog/2020/03/18/consent-decrees-can-reduce-the-number-of-police-related-killings-but-only-when-used-alongside-court-appointed-monitoring/> (discussing a paper by Li Sian Goh at the University of Pennsylvania).

Amendments:

- On page 1, strike lines 3 – 9, and insert the following: “FOR the purpose of authorizing the Attorney General or the State Agency Accountability Counsel to investigate and initiate a civil action to remedy certain unlawful patterns or practices committed by certain government officials; providing that the Attorney General or the State Agency Accountability Counsel shall have subpoena power to support certain investigations; providing that the Attorney General or the State Agency Accountability Counsel may obtain equitable and declaratory relief to eliminate the pattern or practice of certain conduct; and generally relating to remedies for civil rights violations committed by certain government officials.”
- On page 2, line 7, after “(D)” insert “‘DEPARTMENT OF JUVENILE SERVICES’ HAS THE MEANING STATED IN § 9-201 OF THE HUMAN SERVICES ARTICLE AND INCLUDES THE JUVENILE DETENTION FACILITIES SET FORTH IN § 9-226 OF THAT ARTICLE.” And renumber the remaining subsections accordingly.
- On page 2, line 15 after renumbered “(I)” insert “‘LOCAL CORRECTIONAL FACILITY’ HAS THE MEANING STATED IN § 1—101 OF THE CORRECTIONAL SERVICES ARTICLE.”
- On page 2, line 17, insert “(K) ‘STATE AGENCY ACCOUNTABILITY COUNSEL’ MEANS THE INDIVIDUAL APPOINTED PURSUANT TO § 20[----] OF THIS ARTICLE.”
- On page 2, line 22, after “CORRECTIONAL” INSERT “OR LOCAL CORRECTIONAL” before “FACILITY”
- On page 2, line 28, after “(A)” strike “HAS OCCURRED, THE ATTORNEY GENERAL MAY:” and insert “HAS OCCURRED AT A COUNTY OR MUNICIPAL ENTITY COVERED BY SUBSECTION (A), THE ATTORNEY GENERAL MAY TAKE ACTION AS SET FORTH IN SUBSECTION (C)”
- On page 2, line 29, insert “(2) IF THE STATE AGENCY ACCOUNTABILITY COUNSEL HAS REASONABLE CAUSE TO BELIEVE THAT A VIOLATION OF SUBSECTION (A) HAS OCCURRED AT A STATE ENTITY COVERED BY SUBSECTION (A), THE STATE AGENCY ACCOUNTABILITY COUNSEL MAY TAKE ACTION SET FORTH IN SUBSECTION (C).”
- On page 2, line 30, insert “(C)(1) IN EXERCISING THEIR AUTHORITY UNDER SUBSECTION (B), THE ATTORNEY GENERAL AND THE STATE AGENCY ACCOUNTABILITY COUNSEL MAY:” before “(I) 1. SUBPOENA WITNESSES; 2. ADMINISTER OATHS; 3. EXAMINE INDIVIDUALS UNDER OATH; AND 4. COMPEL PRODUCTION OR RECORDS, BOOKS, PAPERS, CONTRACTS, AND OTHER DOCUMENTS; AND”On page 3, line 9, after “EVIDENCE” insert “UNLESS THE INFORMATION IS ALSO OBTAINED BY A METHOD INDEPENDENT OF THE SUBPOENA”
- On page 3, line 10, insert “§ 20[----] OFFICE OF STATE AGENCY ACCOUNTABILITY COUNSEL
(A) THERE IS AN OFFICE OF STATE AGENCY ACCOUNTABILITY

COUNSEL.

(B) WITH THE ADVICE AND CONSENT OF THE SENATE, THE ATTORNEY GENERAL SHALL APPOINT THE STATE AGENCY ACCOUNTABILITY COUNSEL.

(C) (1) THE TERM OF THE STATE AGENCY ACCOUNTABILITY COUNSEL IS 5 YEARS AND BEGINS ON JULY 1.

(2) AT THE END OF A TERM, THE STATE AGENCY ACCOUNTABILITY COUNSEL CONTINUES TO SERVE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(3) A STATE AGENCY ACCOUNTABILITY COUNSEL WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(D) THE STATE AGENCY ACCOUNTABILITY COUNSEL SHALL HAVE BEEN ADMITTED TO PRACTICE LAW IN THE STATE.

(E) BEFORE TAKING OFFICE, THE STATE AGENCY ACCOUNTABILITY COUNSEL SHALL TAKE THE OATH REQUIRED BY ARTICLE I, § 9 OF THE MARYLAND CONSTITUTION.

(F) THE STATE AGENCY ACCOUNTABILITY COUNSEL SHALL DEVOTE FULL TIME AND MAY HIRE NECESSARY STAFF TO CARRY OUT THE DUTIES OF THE OFFICE SET FORTH IN SUBSECTION (A).

(G) THE SALARY OF THE STATE AGENCY ACCOUNTABILITY COUNSEL AND STAFF, AND EXPENSES FOR RENT, EQUIPMENT, SUPPLIES, AND GENERAL OPERATING EXPENSES NECESSARY FOR THE WORK OF THE UNIT SHALL BE AS PROVIDED IN THE STATE BUDGET. THE SALARY OF THE STATE AGENCY ACCOUNTABILITY COUNSEL SHALL NOT BE REDUCED DURING THE COUNSEL'S TERM OF OFFICE.

(H) THE ATTORNEY GENERAL MAY REMOVE THE STATE AGENCY ACCOUNTABILITY COUNSEL FOR GOOD CAUSE SHOWN AFTER NOTICE AND AN OPPORTUNITY TO BE HEARD.

Anthony G. Brown: Give Maryland. A.G.'s office the power to enforce civil rights laws | GUEST COMMENTARY

By Anthony G. Brown

For The Baltimore Sun

Feb 24, 2023 at 8:48 am



Maryland Attorney General Anthony Brown speaks to news crews before participating in the crime summit to discuss public safety in Baltimore. (Karl Merton Ferron/Baltimore Sun)

Civil rights violations occur every day in virtually every sphere of our lives, from where we live to how we work. From the obstacles we face accessing health care to whether we are protected — or brutalized — by those charged with keeping us safe. From who bears the brunt of environmental harms to how we cast our votes to elect our leaders.

- A Black couple's home is appraised at \$472,000. When a second appraiser is led to believe a white family owns the house, he values it at \$750,000.
- An abortion clinic outside Baltimore faces break-ins and harassment, including the stalking of an administrator's child. The incidents are among a recent 128% increase in assaults against abortion clinics and patients.
- A Maryland employer terminates a long-time, high-performing employee who experiences hearing and vision loss from a genetic disorder.
- A Maryland hospital cancels a surgical procedure and refuses to treat a transgender man.
- A female warehouse dispatcher at a Baltimore County auto dealership is fired after she objects to receiving a lower salary than her male counterpart.
- Residents of a predominantly Black neighborhood are exposed disproportionately to toxic fumes from Baltimore's biggest single source of air pollution.
- The city's low-lying areas most vulnerable to increased flooding and sewage backups from climate change are disproportionately communities of color.
- And our hearts break again as another Black man dies at the hands of police.

Safeguarding our fundamental rights has been a long and painful struggle, beginning with the landmark Civil Rights Act of 1964, the Voting Rights Act of 1965 and the Fair Housing Act of 1968, which were conceived to combat racial discrimination, though more recently have been expanded to also target discrimination based on sexual orientation and gender identity. The country has made slow and uneven progress, and we remain far from achieving our founding and aspirational ideals of liberty, equity and justice for all. Those who are the targets of discrimination, who for generations have been the focus of dehumanizing bias and hatred, suffer the most. But none of us is better off in a world still so distant from our ideals.

Yet we would not have achieved even this imperfect progress — where we constantly fall short but keep striving to do better — without the critical and sometimes heroic efforts of those given the authority and responsibility to enforce these laws. Recognizing that a law in and of itself cannot bring about reform unless accompanied by robust enforcement, Congress created the Civil Rights Division of the Department of Justice in 1957 at the same time it enacted the first civil rights statute of the modern era. In the nearly 70 years

since, the U.S. Attorney General has deployed this enforcement arm to stop all manner of discrimination, from [Alabama landlords](#) steering Black tenants to different housing projects; to patterns and practices of police misconduct and racial bias in [Ferguson, Missouri](#); to denying a [transgender student](#) access to educational facilities in California.

But the Department of Justice cannot possibly stand vigilant against every act of discrimination across our 50 states, or by itself protect the rights of 332 million people, including 6 million Marylanders. Successful federal enforcement must be supported and reinforced by state law enforcement partners. A nearby example of what a difference additional enforcement can make is former District of Columbia Attorney General Karl Racine's \$10 million penalty imposed on three real estate firms in the [largest housing discrimination case](#) in U.S. history. Over half of this country's state attorneys general have some degree of authority to enforce [civil rights](#) and/or investigate [patterns or practices](#) of law enforcement misconduct. It is time for Maryland to join their ranks.

We have an exemplary [Commission on Civil Rights](#) in Maryland that does terrific work addressing individual complaints of discrimination. But the Office of the Attorney General must become a partner in its efforts. Just as the federal Equal Employment Opportunity Commission works in tandem with the Department of Justice, each functioning as a force-multiplier for the other, so too should my office work alongside the commission to effect broader and more systemic change. We will be able to build upon the commission's work on behalf of individual Marylanders to root out widespread discrimination on behalf of all Marylanders.

To this end, I have asked the General Assembly, as a top priority for my first session as attorney general, to pass legislation affording my office this authority.

We want to do our part. We must help in the continuing struggle to create a world in which children grow up untouched by any form of discrimination. A world in which they are free to choose where to live and who to love. With equal rights to clean air and water, good jobs, adequate health care, and protection from harm. With our full support for who they are and who they want to be.

Anthony G. Brown (oag@oag.state.md.us) is Maryland's attorney general.

SB 658_FAV_ACLUMD_Carroll.pdf

Uploaded by: Daraja Carroll

Position: FWA



Testimony for the Judicial Proceedings Committee

February 28, 2022

DARAJA CARROLL
PUBLIC POLICY
LEGAL ASSISTANT

SB 658 Human Relations – Patterns and Practices of Civil Rights Violations – Remedies

AMERICAN CIVIL
LIBERTIES UNION
OF MARYLAND

FAVORABLE WITH AMENDMENTS

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The ACLU of Maryland urges a favorable report on SB 658, which would authorize the Maryland Attorney General to investigate and initiate civil actions to remedy unlawful patterns or practices of misconduct committed by law enforcement officials, state behavioral health facilities, correctional facilities, immigration detention facilities, the Division of Correction, the Division of Parole and Probation, and the Department of Juvenile Services. We would like to offer a friendly amendment to section 20-1041 (b) (2) on page 3 of the bill, discussed further below.

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DANA VICKERS
SHELLEY
EXECUTIVE DIRECTOR

ANDREW FREEMAN
GENERAL COUNSEL

Black and Brown people shoulder the brunt of harmful police practices in Maryland and across the country. In the wake of this now often-broadcasted police violence, a host of states have authorized pattern or practice authority for the State Attorney General including California, Colorado, Illinois, Massachusetts, Nevada, New York, Oregon, Rhode Island, Virginia, and Washington. And many of these statutes are modeled on the federal statute giving the United States Attorney General authority to investigate and remedy patterns and practices of misconduct, passed in the wake of the assault on Rodney King. 34 U.S.C. 12601; <https://www.justice.gov/crt/conduct-law-enforcement-agencies>.

The General Assembly knows Maryland needs strong police oversight too. After the killing of Anton Black, the General Assembly passed Anton's law requiring public disclosure of police misconduct records. More can be done to minimize police misconduct and end harmful police practices fostering the distrust between the community and the officers meant to protect and serve. The ACLU of Maryland supports SB 658 with an amendment because it allows the Attorney General to investigate issues in typically removed from public oversight like jails and detention centers, because it complements our independent oversight efforts,

and because it can help challenge institutional practices and failures linked to police violence and misconduct.

SB 658 allows the Attorney General to investigate issues into law enforcement agencies, jails, and detention centers if provided with reasonable cause.

The ACLU of Maryland has long fought for increased community oversight of law enforcement agencies and holding facilities. SB 658 allows community members to file reports providing the reasonable cause necessary for the Attorney General to conduct investigations into possible patterns and practices of misconduct at these facilities.

Recent reports on conditions at the Baltimore City Jail are just one example of potential reasonable cause showings that would likely give rise to investigation by the Attorney General under SB 658. After years of litigation and settlement negotiations, a visit to the Baltimore City Jail in 2022 led to a detailed report¹ listing serious living condition issues, attributable in part to the pandemic leading to lack of inspections, and in part to the self-reported compliance by jail officials. Some of the cited problems include extremely harsh living conditions in the Inpatient Mental Health Unit, profound problems with the infirmary's accessibility for people with disabilities, the quality of medical care for patients, shortages of health care staff, dangerous and inappropriate insulin administration practices, delays in outside specialty medical care, hygiene problems in living units and more. SB 658 would allow for pervasive issues like this to be reported to and investigated by the Attorney General.

SB 658 will help challenge institutional practices and failures linked to police violence and misconduct.

A recent expert report² highlights use of force and misconduct issues in the Prince George's County Police Department, and the department's repeated failure to hold officers accountable for their actions. The expert's report detailed PG County's repeated failure to investigate complaints of racial profiling and pervasive discrimination in Prince George's County's disciplinary processes. The report emphasized not only Prince George's County's failure to initially investigate claims but the improper handling of complaints and investigations into the claims as well. The report noted that at least seventeen Black and Brown Prince George's County officers experienced retaliation following their filing of complaints that white officers engaged in racist, discriminatory, or other unethical conduct.

¹ *Duvall v. Hogan*, Civil Action No. ELH-94-2541 (D. Md. May. 20, 2021), <https://www.aclu.org/wp-content/uploads/legal-documents/774-1-Redacted-Plaintiffs-Tour-Report-2022.10.20.pdf>

² *Hispanic National Law Enforcement Association NCR et al. v. Prince George's County et al.*, District of Maryland No. 18-cv-3821, Expert Report of Michael E. Graham, Aug. 28, 2020

The report further highlights both the lack of discipline for officers who made racist statements or applied unnecessary amounts of force and the ways high-level officers conspired with the Fraternal Order of Police to shield fellow officers and conclude their uses of force were justified. SB 658 will support oversight and bring about more effective processes in entire departments like Prince George's County Police Department and facilities like the Baltimore City jail.

We would like to offer a friendly amendment to strike section 20-1041 (b) (2) of SB 658 because as drafted, the language goes beyond codifying an exclusionary rule required by 5th Amendment, and is instead unnecessarily overbroad in its application to any person who provides evidence. The language of this section could instead be amended to "Information obtained under such a subpoena is not admissible in a later criminal proceeding if admission would violate the accused's constitutional right against self-incrimination."

SB 658 may not be able to remedy the bias that leads to racial profiling, but this legislation makes strides toward addressing problematic policing practices that leave Black and Brown communities incredibly vulnerable to police violence and misconduct. We support SB 658 with an amendment and urge the General Assembly to continue legislating with community-centered, racial justice-related policy at the forefront, until the pattern of Black and Brown police-involved deaths and the practice of killing and brutalization is no more.

For these reasons, the ACLU of Maryland urges a favorable report of SB 658 with amendments.

SB 658 Favorable With Amendment - Joanna Silver fo

Uploaded by: Joanna Silver

Position: FWA



TESTIMONY IN SUPPORT OF SB 658, WITH AMENDMENT Senate Judicial Proceedings Committee, February 28, 2023

My name is Joanna Silver. I am a resident of Silver Spring in District 18. I am testifying on behalf of the Silver Spring Justice Coalition in support of SB 658 with amendment.

The Silver Spring Justice Coalition (SSJC) is a coalition of community members, faith groups, and civil and human rights organizations from throughout Montgomery County committed to eliminating harm caused by police and empowering those communities most affected by policing. For this reason we support authorizing the Attorney General to investigate and obtain equitable and declaratory relief for patterns and practices of civil rights violations, but have one requested amendment.

We know that the United States Department of Justice has initiated pattern and practice investigations in many troubled police departments, including Ferguson, Baltimore City, and where I live, in Montgomery County.¹ We know that those pattern and practice investigations have led to revelations of persistent and wide-spread violations of civil rights and resulted in consent decrees that have been important steps in reforming racist and broken systems. We also know that the Department of Justice can investigate and pursue only a tiny fraction of the possible cases of systemic civil rights violations perpetrated by police departments and other government agencies responsible for the welfare of our most vulnerable community members.

Here in Maryland, organizations like SSJC have little hope of attracting the attention of the Department of Justice to what are clearly systemic abuses, as evidenced by, among other things, data showing grossly disparate enforcement of our state's traffic laws, and the disparate use of force against people of color and people with mental health disabilities.

Giving the Maryland Attorney General the right to investigate pattern and practice violations would provide a much needed additional layer of protection between harmful state systems and the most vulnerable members of our communities. Knowing that their behavior will be subject to greater scrutiny may also motivate law enforcement and other state agencies to examine and reform their own patterns and practices to ensure that they are safeguarding, rather than violating, the civil rights of Maryland residents.

¹<https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/MontgomeryCounty.pdf>.

Unfortunately, one aspect of HB771 raises concerns, and that is section 20–1041(b)(2), which states that information obtained under a subpoena issued as part of a pattern or practice investigation is not admissible in a later criminal proceeding against the person who provides the information. We believe this exclusion could provide protection to bad state actors who rightfully should be prosecuted and who would otherwise not have a 5th Amendment privilege. Should the 5th Amendment offer a testimonial privilege to someone who is subpoenaed during a pattern or practice investigation, then the privilege would operate independent of any language included in this bill and therefore the proposed language is not necessary and should be deleted. In the alternative, the language could be modified to read: “information obtained under a subpoena issued in accordance with this subsection is not admissible in a later criminal proceeding WHEN PROHIBITED BY THE 5TH AMENDMENT.”

For these reasons we respectfully urge you to issue a favorable report.

SB658_DPSCS_OPP.pdf

Uploaded by: Catherine Kahl

Position: UNF



Department of Public Safety and Correctional Services

Office of Government & Legislative Affairs

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OPERATIONS

VACANT
ASSISTANT SECRETARY

JENNIFER A. BESKID
DIRECTOR

BILL: SENATE BILL 658

POSITION: OPPOSE

EXPLANATION: This bill is specific to correctional facilities, Division of Parole Probation, the Division of Correction, and law enforcement agencies, among others. The provides that no governmental authority or an agent of a governmental authority may engage in a practice or conduct that deprives an individual of rights, privileges or immunities secured or protected by the U.S. Constitution or the Maryland Constitution or State or local law. The bill further provides that the Office of Attorney General may bring a civil action to obtain appropriate and declaratory relief to eliminate the practice or conduct.

COMMENTS:

The Department of Public Safety and Correctional Services (Department) operates the Division of Correction (DOC), the Division of Pretrial Detention and Services (DPDS), and the Division of Parole and Probation (DPP).

- DOC operates 13 State correctional facilities housing offenders sentenced to periods of incarceration for 18 months and longer.
- DPDS operates the Baltimore City Pretrial Complex which houses pretrial detainees and incarcerated individuals sentenced to incarceration for periods of 18 months and less.
- DPP supervises parolees, probationers and those on mandatory release from correctional facilities.
- The Department respects the rights, privileges, and immunities secured by the U.S. Constitution and the Maryland Constitution as well as State and local law.
- The Office of the Attorney General (OAG) is the Chief legal officer of the State and acts as legal advisors of State agencies, officials and institutions of State Government. The OAG represents the State in matters involving State government.
- The Correctional Litigation Division of the OAG, provides legal representation for State officials and correctional employees who are

sued by prisoners in federal and State courts for acts arising within the scope of their performance of their duties.

- The Department has an assigned Assistant Attorney General who is responsible for defending the Department against any legal actions.
- Under this bill, the Office of the Attorney General (OAG) may bring a civil action AGAINST the Department in order to obtain the appropriate relief of the practice or conduct that caused an individual's deprivation of rights.
- SB 658 would have the OAG bring action against the Department, while the OAG would also defend the Department against the same action.
- If the Department is expected to obtain independent counsel to defend against the OAG actions, there will be an exorbitant fiscal cost associated with the legal fees which would double if the action moved to court proceeding. The fiscal impact to the State would be exorbitant regardless of whether the OAG or the Department funds the costs of an independent counsel.

CONCLUSION: For these reasons, the Department of Public Safety and Correctional Services respectfully urges the Committee to consider an **UNFAVORABLE** vote on Senate Bill 658.

SB658 - OAG-Patterns and Practices of Civil Rights

Uploaded by: Jennifer Beskid

Position: UNF



Department of Public Safety and Correctional Services

Office of Government & Legislative Affairs

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SB 0658_HoCoSAO_Unfav_Human Relations_PatternsandP

Uploaded by: Rich Gibson

Position: UNF



SENATE BILL 0658

RICH GIBSON, HOWARD COUNTY STATE'S ATTORNEY

POSITION: UNFAVORABLE FOR SB 0658

February 27, 2023

My name is Rich Gibson, I am the State's Attorney for Howard County and the President of the Maryland State's Attorneys' Association (hereinafter MSA). I have been a prosecutor for nineteen years and I am writing today to request an unfavorable report for Senate Bill 0658.

The framers of the Constitution of Maryland understood the need for prosecutorial independence. They wisely created a system that placed the power over the local prosecutor directly and exclusively into the hands of the communities they serve. This bill if enacted has the potential to undermine the voice of the local impacted community with regard to their elected State's Attorney. From our perspective, the problematic language is contained within section G on page 2 – "Law Enforcement Agency has the meaning stated in §3-201 of the Public Safety Article."

Public Safety Article § 3-201 defines law enforcement agency as:

"(d) (1) "Law enforcement agency" means a governmental police force, sheriff's office, or security force or law enforcement organization of the State, a county, or a municipal corporation that by statute, ordinance, or common law is authorized to enforce the general criminal laws of the State."

While not explicitly included, this language is generic enough to allow for an interested party to interpret it to include the local State's Attorneys. This concern is not contrived. Currently in Missouri, the State Attorney General has initiated an action for the removal of the St. Louis Circuit Attorney, Kim Gardner (the equivalent position of a State Attorney in Maryland) on the basis of a "pattern of failure in the discharge of her duties." Kim Gardner contends that she is enforcing the law consistent with the values of her local community. We don't have to go to nearly a thousand miles to the west to see the potential harm this

bill would expose us to in Maryland. Within the last year, our former Governor, Larry Hogan, publicly voiced his concern with the way in which former Baltimore City State's Attorney, Marilyn Mosby, exercised her discretion via a pattern of not pursuing certain cases. Fortunately, we have never in Maryland had a situation where prosecutorial independence was jeopardized precisely because there was no legal mechanism that would allow it. This is at the heart of why we oppose this bill; its enactment would create a potential pathway for a motivated actor for political or other purposes to undermine prosecutorial independence and the will of the voters.

Additionally, prior to creating new powers within a government entity, it is important to examine what, if any, other entities have that same power, and if other entities have that power, are they fulfilling that role in this space? The Civil Rights Division of the Department of Justice has pattern and practice prosecution authority under § 14141 of the Violent Crime Control and Law Enforcement Act of 1994. They have used that power in Maryland to address issues where evidence suggested the practices of the offending organization were depriving people of civil rights guaranteed in the Constitution. Specifically, this power was used recently in both Baltimore City (2016) and Prince George's County (2004). What evidence exists that the Department of Justice is not fulfilling its obligations to the people of Maryland?

Finally, for purposes of clarity, we wish to state emphatically and directly that prosecutors of this State are committed to the equal and fair administration of our laws. There should be no safe space for bigotry, or the mistreatment of people based upon race, religion, gender, national origin, or any other superficial division, used by some to separate one human being from another. Furthermore, we welcome government oversight to ensure those protected rights are not infringed. Our issue is not with this power, but rather is focused on what entities have this power and potential for misuse by those entities. This bill, if enacted into law, will bestow tremendous power upon whomever is in the role of Attorney General not just today but into the future. Similar power has been used to oppress (political and racial) minority voices in the community. Communities who have elected local prosecutors, because their positions and values mirror their own, only to have a State governmental entity disagree with the pattern in how those local prosecutors exercise their authority. Governor Desantis and

State Attorney Andrew Warren of Hillsborough County, Florida (Tampa) and Missouri Attorney General Andrew Bailey and St. Louis Circuit Attorney Kim Gardner are two current examples of circumstances we wish to avoid in Maryland.

For these reasons, **the members of the Maryland State's Attorneys' Association respectfully request an unfavorable report for Senate Bill 0658.**

MCPA-MSA_ SB 658-Patterns and Practice_LOI.pdf

Uploaded by: Andrea Mansfield

Position: INFO



Maryland Chiefs of Police Association

Maryland Sheriffs' Association



MEMORANDUM

TO: The Honorable William Smith, Jr., Chair and
Members of the Judicial Proceedings Committee

FROM: Darren Popkin, Executive Director, MCPA-MSA Joint Legislative Committee
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee
Natasha Mehu, Representative, MCPA-MSA Joint Legislative Committee

DATE: February 28, 2023

RE: **SB 658 - Human Relations - Patterns and Practices of Civil Rights Violations
- Remedies**

POSITION: **LETTER OF INFORMATION**

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) are submitting this letter of information to the Judicial Proceedings Committee concerning SB 658.

The MCPA and MSA fully support and defend the civil and constitutional rights of all citizens in Maryland and across our country. Our officers and deputies work each day to protect and defend these important rights throughout our great state. All of Maryland Law Enforcement has worked hard to put constitutional policing into action, to be transparent in their efforts, and to safeguard lives, property, and human rights throughout Maryland. SB 658 raises several issues that we believe this committee should be made aware of as you deliberate the bill.

1. **Terms and Conditions.** The current bill does not define the exact terms or conditions for the Attorney General's Office to exercise the authority the bill is granting, nor does it provide the protocols for said authority to be exercised. There should be further conversation to address these matters in the legislation.

2. **Conflicts of Interests.** The Attorney General's Office has a responsibility to represent various law enforcement organizations and their members. We are concerned about the ability of the Attorney General's Office to effectively represent law enforcement organizations under the proposed authority without conflict of interest. We understand that there are processes to "wall off" investigations from each other as well as to contract outside counsel for such representation. However, this structure at the very least gives an appearance of such conflict. Failing to address this matter may result in a lack of confidence in the Attorney General's Office by many of its law enforcement clients. It is important to maintain confidence in this critical component of our state

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government and to avoid actual or perceived conflicts of the professional ethical conduct and standards required of members of the bar in diligently representing clients.

3. **Jurisdiction.** The bill raises questions in regard to state and federal jurisdiction over the matters at hand. Several questions should be considered - Under what standards, protocols, and guidance will the Attorney General of the State of Maryland exercise the responsibilities in this bill without conflicting with, or duplicating the efforts of, federal Department of Justice officials exercising the same responsibilities? What are the gaps in DOJ enforcement that this bill is designed to address or correct? Is there a vision that the federal and local officials responsible for executing such investigations would work jointly? How would such matters be balanced in their application?

4. **Consent Decrees.** Jurisdictional matters regarding consent decrees need to be addressed. Will the Attorney General execute consent decrees throughout our state, just as the DOJ has done? Consent decrees are costly and complex. Conflicting or costly state and federal consent decrees could overburden law enforcement.

5. **Insurance.** There are extremely high costs associated with managing consent decrees. Local governments that do not self-insure rely on insurance carriers. These governments could suffer financial strain if insurance carriers were to refuse coverage due to associated claims. In extreme cases, it could result in bankruptcy and interruption of other vital services that local governments provide.

Again, members of Maryland law enforcement fully embrace their collective responsibility to serve and protect our communities. They strive to offer fair, constitutional, and effective law enforcement services to everyone living in or visiting our state. MCPA and MSA understand the need for oversight and accountability in these efforts and support the same. We submit this letter of information to receive clarification and a true understanding of this proposed legislation so that we can remain responsible and diligent in our service to the community.